

MEGHALAYA INFORMATION COMMISSION, SHILLONG

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No.MIC/Appeal/37/2009/20

(1) Shri M.Kharmynthong, Rynjah Village, Housing Colony, Shillong }
(2) Smti Linda M.Marbaniang, Jaiaw Shyiap, Shillong. } Appellants

-Vrs-

(1) Secretary, M.P.S.C., Shillong (D.A.A.) }
(2) Shri P.War, Deputy Secretary, M.P.S.C., Shillong (P.I.O.) } Respondents

30-6-2009

ORDER

The Respondent-DAA, Shri Ajay Tewari, IAS and the Appellants are present in the Commission today.

The case of the Appellant, Shri M.Kharmynthong is that he had applied for information from Respondent No.2, who is the P.I.O. office of the Meghalaya Public Service Commission, Shillong vide his R.T.I. application dated 1-10-2008 along with the requisite fee of Rs.10/-. The appellants had sought the following information in connection with the examination for promotion to the post of Accounts Officer conducted by the Meghalaya Public Service Commission under the Meghalaya Accounts Services Rule, from 27th to 29th April, 2006 and 5th to 7th December, 2006.

- (1) Copy of all answer scripts of the candidates who have appeared in the above written examination.
- (2) Copy of model answers to the examination and the cut off marks.
- (3) The procedure for conducting the viva-voce, and if any change from the procedures of previous examinations a copy of the guidelines thereof may be furnished.
- (4) Copy of the score sheet for viva-voce be furnished.
- (5) Name and Roll No of the candidates who secured exemption marks since previous examination.
- (6) Noting of the file in which successful candidates have been declared passed in the examination and list of successful candidates.
- (7) Name and Roll No. of all candidates who appeared the said examination.
- (8) Copy of question papers and programme of the examination.

Failing to receive any response from the P.I.O. within the statutory period of 30 days which expired on 1-11-2008 the appellants, preferred the first appeal before the D.A.A. on 24-11-2008. Meanwhile, the P.I.O. responded and communicated his decision on 25-11-2008 vide letter No. MPSC/RTI-1/2008-9/2. It also appeared that the D.A.A. did not take any decision on the appeal dated 24-11-2008 made by them prior to receipt of the decision of the P.I.O. As a consequence, the appellants approached the Commission with the second appeal dated 6-1-2009. The Commission vide its Order dated 14-1-2009 in case No. MIC/Appeal/4/2009 decided that the second appeal was inappropriate inasmuch

as the First Appellate Authority did not dispose off the first appeal and advised the appellants to approach the D.A.A. of the public authority with the first appeal based on the information they have already received from the P.I.O. It has been made clear that they are at liberty to prefer the second appeal before the Commission after a period of 30 days of making the appeal before the D.A.A.

Failing to receive the decision on the first appeal within the statutory period of 30 days, the appellants had preferred the instant second appeal before this Commission.

The Commission vide its Order dated 7-4-2009 had called for a report on the appeal from the first appellate authority of the Meghalaya Public Service Commission, Shillong and also a show cause to the P.I.O. for not awarding a penalty of Rs. 6250/- for a delay of 25 days under section 20 of the R.T.I. Act. With the permission of this Commission, the Respondent-DAA who was on election duty as Observer outside the State and then on Earned Leave, submitted a report on 30-6-2009 on returned from leave.

The Respondent-PIO vide his letter No. MPSC/RTI-1/2008-9/2 dated 25-11-2008 furnished the following information to the appellants in response:

- (1) The answer scripts of all candidates who appeared in the written examination cannot be supplied in view of section 8(1)(g)(j) of the R.T.I. Act.
- (2) A copy of model answer to the examination does not exist in the Commission. However, the written examination was based on the answer to the questions set.
- (3) The procedure of conducting viva-voce remained unchanged as usually done in the previous years.
- (4) A copy of score sheet of two applicants are enclosed.
- (5) Names and Roll No. of candidates who scored exemption marks cannot be supplied in view of section 8(1)(g)(j) of the R.T.I.
- (6) Noting in the files declaring the candidates passed does not exist, however, the list of successful candidates is enclosed.
- (7) Names and Roll No. of candidates who appeared in the examination enclosed.
- (8) A copy of question papers and programme of examination enclosed.

During the hearing of the Commission on 21-5-2009, the response furnished by the Respondent-PIO to the appellants was taken up and it was agreed by the appellants that information on two items No. 2, 4, 7 & 8 of the original R.T.I. application have been furnished by the Respondent-PIO to the appellants and received by him. The appellants are not however satisfied with the decision conveyed by the Respondent-PIO on item No. 1, 3, 5 & 6. Hence the instant appeal.

The Commission perused the report dated 29th June, 2009 vide letter AT/MPSC/2009/2 received from the Respondent-DAA. The report clearly brought out the following decision on item No. 1,3, 5 & 6 of the original application filed by the appellants.

Item No. 1: The First Appellate Authority confirmed the decision of the Respondent-PIO that the information sought for is covered by exemptions under section 8 of the R.T.I. Act.

Item No. 3: The report clearly brought out that there was a change in the pattern of conducting the viva-voce test. Respondent-DAA produced letter No.FEWG.25/2004/Pt/30 dated 30-10-2006 from Finance Department, Govt. of Meghalaya agreeing to re-conduct the said viva-voce test of the above examination in the manner different from the procedure followed in the earlier examination.

Item No. 5: The Respondent-DAA agreed that the names and roll Nos of the candidates who secured exemption marks since the previous examination can be furnished to the appellants.

Item No. 6: Noting of the file in which the candidates have been declared passed in the said examination is available and can be furnished to the appellants.

Hence, the only issue left for decision by the Commission in the instant appeal is the following:

Whether the answer scripts of all the candidates who appeared in the said examination are exempted from disclosure under the R.T.I. Act.?

The Meghalaya Public Service Commission (MPSC) used to conduct written examination and viva-voce test for promotion of the post of Accounts Officer under the Meghalaya Accounts Services Rules. The last written examination was conducted by the MPSC on 25th, 26th & 27th April, 2006 followed by viva-voce test on 5th, 6th & 7th December, 2006 and the result of the examination was declared on 22-12-2006. The present appellants might be two amongst the candidates who appeared in the above examination but failed to receive recommendation for promotion by the examining body (MPSC). They had therefore come forward with an R.T.I. application before the public authority to get to know about their performance in the said examination and, with a view to comparing their own performance with other candidates, they have requested for the answer scripts of all the candidates who appeared in the above examination.

The Respondent-PIO while claiming exemption from disclosure under the R.T.I. Act had claimed that the disclosure will endanger the life and physical safety of any person understandably of the examiners of the papers and therefore, exempted from disclosure under section 8(1)(g)(j) of the R.T.I. Act. The Respondent-PIO had also claimed exemption by virtue of the provision of section 8(1)(g)(j) of the Act stating that the information sought is personal information, disclosure of which has no relationship to any public activity or interest and could cause unwarranted invasion of privacy to individuals examiners.

The Respondent-DAA while confirming the decision of the Respondent-PIO stated slightly different grounds. The extract from letter No. AT/MPSC/2-009/2 dated 29-6-2009 of the D.A.A. is produced below:

“The answer scripts of other candidates cannot be disclosed to the appellant as these are the intellectual property of the Commission and therefore disclosure of

this would harm the competitive position of the third party i.e, other candidates. The Commission (MPSC) is of the opinion that the larger public interest does not warrant the disclosure of the answer scripts of all the candidates to the applicants. Therefore, the information is denied under Section 8(1)(d) of the RTI Act, 2005. It must be understood that revealing of the answer scripts of other candidates will undermine the Commission's essentially confidential nature of work and nonetheless, if all the candidates start demanding this disclosure, the system will become unworkable. Disclosure of the answer scripts of other candidates is not desirable as the candidates will start questioning the fair evaluation of the answer scripts by the examiners in every possible manner and will tend to approach legal forum on flimsy reasons to halt the selection in the guise of legal battle.”

The answer scripts of any candidate in any examination are evaluated by examiners who are expert in the subjects. It may be possible that such examiners had to identify themselves through signatures etc that the evaluation is made by them. The Commission is not inclined to accept the claim that because of such identity/signature of the examiners on the answer scripts, disclosure of the information will endanger the life or physical safety of the examiners because such identity marks may be blackout or erased while making the copies. Similarly the plea of the Respondent-PIO that the answer scripts are personal information of the candidates and disclosure has no relationship to any public activity or interest is not found acceptable to this Commission. The MPSC is conducting the said examination in the interest of the Govt. which is therefore in the public interest. Also, the recommendation made by the MPSC to the Govt. is an act done in the public interest.

The claim made by the Respondent-DAA that the answer scripts of the candidates are intellectual property of the Commission has also not been found acceptable to this Commission. The information available with the MPSC is not the intellectual property of the MPSC as the MPSC is not involved in any form of commerce or trade. The plea of the Respondent-DAA that revealing of the answer scripts of other candidates will undermine the Commission's essentially confidential nature of work, however, is a moot point. While this Commission does not accept any claim of confidentiality in the activities of a public body like the MPSC, it is however, noted that in every examination it is in the mind of every candidate that the content of the answer scripts is placed by them at the disposal of the examining body in the form of trust and confidence both for secrecy and fair play. Therefore, the information available with the MPSC in the form of answer scripts of the candidates are held by the MPSC in the fiduciary relationship.

In this connection, this Commission refers to the observation made by the Hon'ble High Court of Kolkatta in WP No. 22176 of 2007, Pritam Rooj – Vrs - University of Kolkatta, an extract of which is reproduced below:

“As much as an examining body may owe an obligation to its set of examiners, it owe greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners.”

In recognition of the existence of a fiduciary relationship between the MPSC and the examinees, this Commission decides that the information viz., the content of the answer scripts of the candidates is covered under the provision of Section 8(1)(e) of the R.T.I. Act and therefore exempted from public disclosure.

This Commission also recognizes that transparency and accountability demands that the entire process of conducting such examinations by such public bodies should be carried out in an open and transparent manner. The Commission therefore, recommends to the State Govt., of Meghalaya that all advertisements for filling up of vacancies of Govt., posts through the MPSC and other recruitment-recommending bodies should contain a clear indication that the content of the answer scripts will be made public if called for. Alternatively, Govt., may frame necessary rules to that effect. Pending such action by the Govt., the answer scripts of the candidates in the said examination other than those of the appellants themselves, shall not be disclosed.

The Respondent-DAA/PIO shall make available within a period of 14 days from the date of this Order. The information on item 3, 5 & 6 of the original R.T.I. application along with copies of the answer scripts of the appellants only, with intimation to the Commission.

The Respondent-PIO had been asked to show cause under section 20 of the R.T.I Act why penalty @ Rs.250/- per day should not be imposed upon him for the delay of 25 days w.e.f. 1st November, 2008 to 24th November, 2008. While furnishing his show cause, the Respondent-PIO vide letter No.MPSC/RTI-1/2008-09/33 dated 18th May, 2009 stated that the delay was not intentional or deliberate on his part but because of the fact that the information has to be processed at various levels at the office of the MPSC which has taken longer time than what was prescribed under the Law. The Act does not provide any extension of time beyond the statutory period of 30 days to make up any delay in providing the information. Therefore, the ground put forward by the PIO for the delay is not at all justifiable. Hence, in accordance with the provision of Section 20 of the R.T.I. Act, Shri P.War, PIO, Meghalaya Public Service Commission, Shillong is hereby awarded a penalty of Rs.6250/- (25days x 250). He shall deposit the above amount to the Treasury under the Head of Account **“0070-Other Administrative Services etc., 60-Other Services, 118-Receipt under the Right to Information Act, 2005 Volume – I (02) Fees & Fines for the Penalty Amount Imposed by the Commission,”** with intimation to this Commission within a period of 30 days from the date of this Order.

(G.P.Wahlang)
C.I.C.

Memo.No.MIC/Appeal/37/2009/20-A

Dated Shillong, the 30th June, 2009

Copy to:-

- (1) Secretary, Meghalaya Public Service Commission, Shillong (D.A.A.)
- (2) Shri P.War, Meghalaya Public Service Commission, Shillong (P.I.O.)
- (3) Shri M.Kharmynthong, Rynjah Village, Housing Colony, Rynjah, Shillong,
Phone 98562-22493.
- (4) Smti Linda M.Marbaniang, Jaiaw Shyiap behind St. Joseph Dispensary,
Jaiaw, Shillong, Phone 98630-23812.

(P.T.Rani)
Under Secretary,
Meghalaya Information Commission,
Shillong.